

REMARKS

1. The Examiner concedes that the rejection of claim 47 (OA §2) for lack of enablement may be overcome by proof that it was deposited under the Budapest Treaty.

Applicants herewith enclose receipts and viability statements from Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (DSMZ), an International Depository Authority under the Budapest Treaty, acknowledging that strains DN220-DN227 were deposited with DSM under Budapest treaty (as DSM 11033-DSMZ 11040, respectively).

Counsel hereby states that the deposit relevant to claim 47 (DN 225, DSM 11038) was made under the Budapest Treaty and that all restrictions imposed by the depositor on availability to the public of the deposited material will be irrevocably removed upon the issuance of the patent.

2. The rejections of claims 35-36 set forth on office action pp. 5-10 are moot because (1) claim 35 has been amended to limit it to the subject matter (clauses (I) and (II) of claim 37) which was deemed allowable (bottom of page 10), and (2) claim 36 has been cancelled, all without prejudice or disclaimer. Claim 37 is cancelled as redundant in view of the amendment to 35.

3. Claims 41-46, deemed withdrawn under the doctrine of constructive election (OA pp. 2-3), are cancelled, without prejudice or disclaimer.

USSN - 10/658,376

4. The objection to claim 40 as containing a typing error (bottom of page 3) is well taken and the claim has been corrected.

5. The objection to claims 39 and 40 as being dependent on a rejected base claim (bottom page 10) is not understood as these claims are dependent on allowed claim 1.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 

Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
IPC:lms
G:\ipc\A-C\CHRH\NILSSON6B\pto amend3.wpd